REMARKS

Applicant requests reconsideration and allowance in view of the following remarks. Claims 1-36 are pending, with claims 1, 22, and 30 being independent. Claim 37 has been cancelled and claims 30-36 have been amended. No new matter has been added.

Claim Rejections Under 35 U.S.C. § 101 (Double Patenting)

Claims 1-37 have been rejected under 35 U.S.C. § 101 for claiming the same invention as that of claims 1-18 of Appelman (U.S. Patent No. 6,385,656). Applicant requests reconsideration and withdrawal of the rejection of claims 1-37 because claims 1-37 of the current application and claims 1-18 of Appelman are not directed to the same invention.

The MPEP states that:

A reliable test for double patenting under 35 U.S.C. 101 is **whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent**. In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). Is there an embodiment of the invention that falls within the scope of one claim, but not the other? If there is such an embodiment, then identical subject matter is not defined by both claims and statutory double patenting would not exist. For example, the invention defined by a claim reciting a compound having a "halogen" substituent is not identical to or substantively the same as a claim reciting the same compound except having a "chlorine" substituent in place of the halogen because "halogen" is broader than "chlorine." On the other hand, claims may be differently worded and still define the same invention. Thus, a claim reciting a widget having a length of "36 inches" defines the same invention as a claim reciting the same widget having a length of "3 feet."

MPEP § 804(II)(A) (emphasis added)

Independent claim 1 of the current application recites the steps of "determining a digital signature of a requested file stored by at least one provider node in the network system; looking up the digital signature in an index of signatures; and forwarding a previously compressed version of the requested file that has been stored at an intermediate node when the digital signature is found in the index of signatures." None of these steps are recited by claims 1-18 of Appelman, and more specifically, none of claims 1-18 of Appelman recite a "digital signature."

Independent claims 22 and 30 of the current application recite steps similar to those of independent claim 1 of the current application. Therefore, applicant requests reconsideration and withdrawal of the double patenting rejection of independent claims 1, 22, and 30 and their dependent claims 2-21, 23-29, and 31-36.

Claim Rejections Under 35 U.S.C. § 101

Claims 30-37 have been rejected under 35 U.S.C. § 101 for being directed to non-statutory subject matter. The Office Action states that, generally, when functional descriptive material is recorded on some computer readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. See Office Action of July 6, 2007 at page 3. Without conceding the propriety of this rejection, applicant has amended independent claim 30 to recite a "tangible computer readable medium" and has cancelled claim 37. The tangible computer readable medium of amended claim 30 comprises one or more code segments that, when executed, cause a computer perform the steps of determining, looking, and forwarding. Accordingly, applicant requests reconsideration and withdrawal of the rejection of claims 30-37.

Claim Rejections Under 35 U.S.C. § 102

Claims 1, 22, and 30 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Steely (U.S. Patent No. 5,829,051). Applicant requests reconsideration and withdrawal of the rejection of claims 1, 22, and 30 because Steely fails to describe or suggest all of the subject matter of independent these claims.

Claim 1 recites a method for improving performance by increasing available bandwidth in a network system that includes one or more requestor nodes, one or more provider nodes and one or more intermediate nodes that includes determining a digital signature of a requested file stored by at least one provider node in the network system, looking up the digital signature in an index of signatures, and forwarding a previously compressed version of the requested file that

has been stored at an intermediate node when the digital signature is found in the index of signatures.

Applicant respectfully requests reconsideration and withdrawal of the rejection because Steely fails to describe or suggest a network system including one or more requestor nodes, one or more provider nodes and one or more intermediate nodes, determining a digital signature of a requested file stored by at least one provider node in the network system, and forwarding a previously compressed version of the requested file that has been stored at an intermediate node when the digital signature is found in the index of signatures, as recited by independent claim 1.

In general, Steely describes a cache coupled between a memory and a microprocessor. See Steely at Abstract. The cache, memory, and microprocessor are all connected within a computer processing system by multiple buses. See Steely at col. 3, lines 29-38; Fig. 1. Thus, Steely does not describe or suggest a network system that include including one or more requestor nodes, one or more provider nodes and one or more intermediate nodes, but rather describes a single computer processing system.

In addition, Steely does not describe or suggest determining a digital signature of a requested file stored by at least one provider node in the network system. Rather, Steely describes a lower address portion of an address corresponding to a cache index for accessing a cache data store. See Steely at col. 3, lines 52-60. The lower address portion of Steely points to a location in the cache containing digital content requested by the microprocessor. The lower address portion is not a digital signature of a requested file, but rather it is an address of a location within a cache which may contain various digital content at different times. See Steely at col. 7, lines 46-55. Therefore, Steely does not describe or suggest a digital signature of a requested file stored by at least one provider node in the network system, as recited in independent claim 1.

Finally, Steely does not describe or suggest forwarding a previously compressed version of the requested file that has been stored at an intermediate node when the digital signature is found in the index of signatures. Steely does not describe or suggest compressing a file nor does Steely describe or suggest storing a previously compressed file in an intermediate node.

Therefore, Steely does not describe or suggest <u>a network system</u> including one or more requestor nodes, one or more provider nodes and one or more intermediate nodes, <u>determining a digital signature of a requested file</u> stored by at least one provider node in the network system, <u>and forwarding a previously compressed version of the requested file</u> that has been stored at an intermediate node when the digital signature is found in the index of signatures, as recited by independent claim 1.

Independent claim 22 recites a system for improving performance of a network system corresponding to that of independent claim 1 and amended independent claim 30 recites a computer program on a tangible computer-readable medium having one or more code segments that, when executed, cause a computer to do the same. Accordingly, for the reasons noted above with respect to independent claim 1, applicant requests withdrawal of the rejection of claims 22 and 30.

Conclusion

Applicant submits that all claims are in condition for allowance.

It is believed that all of the pending issues have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this reply should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this reply, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.
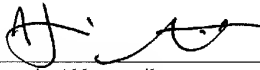
The Petition for Extension of Time fee of $120 is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply any other charges or credits to Deposit Account 06-1050.

Respectfully submitted,

Date:____November 6, 2007____

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